IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6362 of 2005

Between:

Engineering Projects (India) Limited, (A Govt. of India Enterprise), 103 Vamsi Residency, Yousufguda Check Post, Hyderabad-500 045,
Rep. by its General Manager.

..... PETITIONER

AND

1 Union of India, Rep. by its Secretary, Ministry of Defence,
New Delhi.
2 Military Engineer Service, Rep. by its Chief Engineer (FY), Hyderabad,
opp:Parade Grounds, S.P. Road, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of Mandamus declaring as illegal and arbitrary the letter No. 830207/SEC/363/E8 dt. 26-2-2005 issued by the 2nd Respondent and set aside the same with a consequential direction to the 2nd Respondent to act as per the terms of contract CA No. CE (FY) HYD/SEC/15 of 2002-2003 dt. 26-3-2003 and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case.

Counsel for the Petitioner : MR. K.SRINIVASA RAO

Counsel for the Respondents : MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.6362 OF 2005

ORDER :

In pursuance of the tenders invited by the 2nd respondent for awarding the work – Provision of Married Accommodation for 28 Majors, 12 Captains at Secunderabad and 64 ORS at Golconda, the petitioner submitted its tender and the same was accepted by the 2nd respondent by proceedings dated 11-2-2003. Pursuant thereto, an agreement dated 26-2-2003 was entered into in between the petitioner and the 2nd respondent in which the value of the work was shown as Rs.579.3 lakhs. The petitioner states that it has executed 40% of the work in terms of the contract. However, the contract was terminated by the 2nd respondent on 25-1-2005. Thereafter, the 2nd respondent by letter dated 26-2-2005 informed various offices in different parts of the country that a tentative amount of Rs.1,06,35,521/- is recoverable from the petitioner on account of cancellation of the contract and therefore requesting them to withhold the said amount from the payment due or becoming due to the petitioner. The said action of the 2nd respondent in issuing the letter dated 26-2-2005 is under challenge in this writ petition.

The petitioner states that apart from the contract in question, the petitioner has also been executing six different works awarded by the Military Engineering Services (MES) and the said works are under the supervision of different agencies and the same are beyond the jurisdiction of the 2nd respondent. Therefore, according to the petitioner, the 2nd respondent has no jurisdiction or authority to direct them to

withhold the running bills for the purpose of adjusting the outstanding dues.

The law is well settled that a post-contractual dispute is not amenable to a proceeding under Article 226 of the Constitution of India unless it is shown that the matter involves a constitutional issue or where a case is made out to show that the breach on the part of the State resulted in violation of Fundamental Rights of the party.

In the case on hand, admittedly the contract stood terminated on 26-2-2005. The petitioner is aggrieved by the consequential steps taken by the respondents for recovery of the amounts alleged to be due from the petitioner. Even assuming that such action is in breach of terms and conditions agreed upon, the relief sought for by the petitioner is nothing but enforcement of terms and conditions and no case is made out to show that the matter involves enforcement of any statutory right much less a Fundamental Right. It is not the case of the petitioner that the impugned action is in violation of any statutory provision. That apart, admittedly the agreement contains a specific clause for arbitration and all disputes relating to contracts shall be referred to sole arbitrator as specified under clause 70 of the General Conditions of Contract. Without exhausting the said alternative remedy, the petitioner cannot maintain the writ petition straightaway. The plea of the petitioner that the said remedy is not effective since the agreement provides for arbitration through an official of the 2nd respondent itself is without any substance since the petitioner having voluntarily entered into the agreement is bound by the terms and conditions specified thereunder.

Viewed from any angle, I do not see any justifiable ground to entertain this writ petition.

Accordingly, the Writ Petition is dismissed. No costs.

However, this shall not preclude the petitioner to work out the common law remedy before the appropriate forum.

6th April, 2005

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To

1 The Secretary, Union of India, Ministry of Defence,
New Delhi.
2 The Chief Engineer (FY), Military Engineer Service, Hyderabad,
opp:Parade Grounds, S.P. Road, Secunderabad.

3. Two CD copies.